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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,571	08/27/2003	Christopher Oriakhi	200300745-1	8233

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FORT COLLINS, CO 80527-2400

EXAMINER

BALDWIN, GORDON

ART UNIT	PAPER NUMBER
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1794

NOTIFICATION DATE	DELIVERY MODE
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03/26/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/650,571	Applicant(s) ORIAKHI ET AL.	
	Examiner GORDON R. BALDWIN	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-23 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-23 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/14/2008 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20-23 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Sapieszko (U.S. Pat. No. 6,521,246).

Consider claims 20, 21, 23 and 25, Sapieszko discloses a three dimensional composition of a cement that is made of a particulate composition of an inorganic phosphate particulates, which is shown to include hydroxyapatite. (Col. 1 lines 12-28 and lines 45-50 and Col. 6 lines 55-60)

This composition or cement of the Sapieszko reference is shown to be a porous body showing significant micro-porosity (Col. 12 lines 17-35), which is defined to be a

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surface having a pore diameter of less than 10 microns. (Col. 4 lines 50-56) This portion of Sapieszko indicates that the surface pores are to be no larger than about 10 microns. The claim language in claims 23 along with dependant claim 49 indicate that the inorganic phosphate material can have a microporous surface exhibiting a mean pore diameter at or below 10 microns.

Additionally, Sapieszko discloses that the material can be created to make shaped bodies by adding a binding agent such as carboxymethyl cellulose or other binding agent to give rise to a paste or slurry and then applying methods such as spray forming to make a shaped body. (Col. 15 lines 1-10) Along with the cellulose motioned above, Sapieszko discloses that it is known to mix calcium phosphate with polymers such as poly-acrylic acids (PAA) or poly-vinyl alcohols to make a dried calcium phosphate structure. (Col. 24 lines 36-47)

The teaching of the spraying method (mentioned above) is considered to disclose not only an ink-jettable ability but also the layering of the composition since such a spraying of the cement would form a body by layering the cement to form the desired shape. Regarding the ability of the structure to retain its form upon drying, the article of Sapieszko is made to faithfully mimic to porosity, shape and other physical characteristics of a variety of shaped bodies to be used in industrial and surgical uses, and since these uses would require accurate representations of the desired structure, it is considered to be an intrinsic property of the product that upon drying, it retains the proper size and form desired. (Abstract)

Regarding claim 22, Sapieszko discloses the use of a binder coated calcium phosphate powders, whereby dissolving the polymer (considered to include poly-acrylic acids (PAA) or poly-vinyl alcohols to make a dried calcium phosphate structure (Col. 24 lines 36-47)) in a suitable organic solvent (aqueous liquid) (considered to include water (Examples 1, 3, 6-8, 10, 11, 13,15, 16, 35,36), is also considered to give a low molecular weight polymer.

Response to Arguments

Applicant's arguments, filed 1/14/2008, with respect to the rejection(s) of claim(s) 20-23 and 25 under 35 U.S.C. 103 (a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Sapieszko (U.S. Pat. No. 6,521,246).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GORDON R. BALDWIN whose telephone number is (571)272-5166. The examiner can normally be reached on M-F 7:45-5:15.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GRB

**/Timothy M. Speer/
Primary Examiner
Art Unit 1794**